

1
2
3
4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 CITIZENS FOR CLEAN AIR, *et al.*,

8 Plaintiffs,

9 v.

10 MICHAEL S. REGAN, *et al.*,

11 Defendants.

12 Cause No. C22-1382RSL

13 ORDER GRANTING
14 ALASKA'S MOTION TO
15 INTERVENE

16 This matter comes before the Court on the "State of Alaska's Motion to Intervene." Dkt.
17 # 11. Alaska argues that it has a right to intervene under Fed. R. Civ. P. 24(a)(2) or, in the
18 alternative, that it should be granted permissive intervention under Fed. R. Civ. P. 24(b)(1).
19 Plaintiffs do not object to intervention, but the United States insists that Alaska lacks a legally
20 protected interest that justifies intervention as a matter of right. The United States takes no
21 position on Alaska's request for permissive intervention. Having reviewed the memoranda and
22 exhibits submitted by the parties,¹ the Court finds as follows:

23 Federal Rule of Civil Procedure 24(a)(2) requires a court to grant a timely motion to
24 intervene if the movant "claims an interest relating to the property or transaction that is the
25

26

¹ This matter can be decided on the papers submitted. Alaska's request for oral argument is
27 DENIED.

1 subject of the action[] and is so situated that disposing of the action may as a practical matter
2 impair or impede the movant's ability to protect its interest, unless existing parties adequately
3 represent that interest." The parties agree that Alaska's motion is timely.
4

5 When analyzing whether the movant has "an interest relating to the property or
6 transaction that is the subject" of the litigation, the Ninth Circuit requires that the applicant
7 claim a "significantly protectable" interest. *See, e.g., Oakland Bulk & Oversized Terminal, LLC*
8 v. *City of Oakland*, 960 F.3d 603, 620 (9th Cir. 2020). A proposed intervenor has a significantly
9 protectable interest "if (1) it asserts an interest that is protected under some law, and (2) there is
10 a relationship between its legally protected interest and the plaintiff's claims." *Kalbers v. United*
11 *States Dep't of Justice*, 22 F.4th 816, 827 (9th Cir. 2021) (citation omitted). "The interest test is
12 not a clear-cut or bright-line rule, because no specific legal or equitable interest need be
13 established. . . . Instead, the 'interest' test directs courts to make a practical, threshold inquiry
14 and is primarily a practical guide to disposing of lawsuits by involving as many apparently
15 concerned persons as is compatible with efficiency and due process." *U.S. v. City of Los*
16 *Angeles*, 288 F.3d 391, 398 (9th Cir. 2002) (internal quotation marks, citations, and alterations
17 omitted). Where the proposed intervenor is the intended beneficiary of an Act of Congress, it
18 may have a "significant protectable interest" even if Congress did not see fit to create a private
19 cause of action or other enforceable right in its favor. *See California ex rel. Lockyer v. U.S.*, 450
20 F.3d 436, 441 (9th Cir. 2006); *County of Fresno v. Andrus*, 662 F.2d 436, 437-38 (9th Cir.
21 1980). The relationship element of Rule 24(a)(2) "is met if the resolution of the plaintiff's
22

1 claims actually will affect the applicant.” *Id.* While an applicant seeking to intervene has the
2 burden of establishing the Rule 24(a)(2) elements, “the requirements are broadly interpreted in
3 favor of intervention.” *Citizens for Balanced Use v. Montana Wilderness Ass’n*, 647 F.3d 893,
4 897 (9th Cir. 2011) (citation omitted).

5 Plaintiffs bring this action under the Clean Air Act (“CAA”) to compel the U.S.
6 Environmental Protection Agency (“EPA”) to approve or disapprove the state implementation
7 plan (“SIP”) developed by the State of Alaska for the Fairbanks North Star Borough fine
8 particulate matter (PM-2.5) nonattainment area. Plaintiffs allege that the EPA had a statutory,
9 nondiscretionary duty to render its decision by June 15, 2022, and that it failed to do so. For its
10 part, the EPA is willing to admit that it failed to approve or disapprove (or to approve in part and
11 disapprove in part) the SIP by June 15, 2022, and that it still has not done so. Dkt. # 9 at ¶ 48. It
12 is not, however, willing to admit that it has failed to perform a mandatory duty. *Id.* at ¶ 52.

13 Alaska is not, as the EPA would have it, simply arguing that the downstream effects of a
14 ruling compelling the EPA to issue its decision would adversely impact Alaska’s operations
15 and/or limit its ability to regulate air quality within the state. Rather, although not clearly stated,
16 it appears that Alaska seeks an opportunity to argue that, in the circumstances presented here
17 where technical complications arising from the application of an outdated modeling program to
18 a subarctic environment has made it impossible to demonstrate attainment, the EPA was not
19 required to issue a decision by June 15, 2022, or that such a requirement should be excused. If
20 Alaska is right and the CAA did not mandate a decision by June 15, 2022 – an issue the Court
21
22
23
24
25
26
27
28

1 declines to decide in the context of this motion to intervene – Alaska would have a statutory
2 interest in obtaining a correct ruling on the issue to preserve the current status of the planning
3 effort wherein the EPA is considering Alaska’s arguments and the adequacy of the SIP. Alaska
4 would have no other opportunity to impact the schedule on which the EPA issues its decision,
5 and there is no indication that the EPA intends to make the arguments Alaska has raised here.
6

The Court finds that Alaska has satisfied the elements of Rule 24(a)(2). It has a significantly protectable interest in obtaining a correct determination regarding the deadline by which the EPA must approve or disapprove its SIP, its exclusion from this litigation would impair or impede its ability to protect that interest, and it does not appear that the EPA is inclined to pursue the arguments Alaska has raised. Because intervention as a matter of right is appropriate, the Court need not evaluate the request for permissive intervention.

17 For all of the foregoing reasons, Alaska’s motion to intervene as a defendant in this
18 matter (Dkt. # 11) is GRANTED.

21 || Dated this 9th day of January, 2023.

Robert S. Lasnik
Robert S. Lasnik
United States District Judge

**ORDER GRANTING ALASKA'S
MOTION TO INTERVENE - 4**